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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,276	02/18/2004	David J. Stroh	GP-303616	2049

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EXAMINER

HOANG, JOHNNY H

ART UNIT	PAPER NUMBER
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3747

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/781,276	Applicant(s) STROH, DAVID J.	
	Examiner Johnny H. Hoang	Art Unit 3747	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 7, 9, 10, 13, 15, 17, 18, 21, 23, 25-27, 29, 31, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Matthews et al (US 6,895,941 B2).

Regarding claim 1, the reference of Matthews et al discloses a method and apparatus for a variable displacement internal combustion engine including the following subject matters:

a pedal sensor (42) that generates a pedal device position signal (col. 3, lines 42-49);

an adjusted pedal module (18) that determines an adjusted pedal based on said pedal device position signal and a vehicle speed (col. 3, lines 14-37); and

an engine torque request module that determines an engine torque request based on said adjusted pedal and an engine speed (col. 2, lines 16-33; col. 3, line 50 through col. 4, line 57; and Fig. 2).

Regarding claim 2, as discussed in claim 1 (col. 3, line 50 through col. 4, line 57).

Regarding claim 5, as discussed in claim 1 (col. 4, lines 24-35).

Regarding claims 9, as above discussions.

Regarding claims 10, 13, 15, and 17 are rejected as the same reasons as above claims.

Regarding claims 18, 21, 23, 25-27, 31, and 33, see the rejections of the control system of claims 1-9.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 8, 14, 16, 22, 24, 30, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews et al.

Regarding claims 6, 8, 14, 16, 22, 24, 30, and 32, with reference to above rejections Matthews et al disclose all that is claimed except the engine speed using a mathematical model.

Furthermore, the reference of Matthews et al discloses the pedal position sensor 42 signal is also communicated to the powertrain controller 18 for further processing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the internal combustion engine being operating with the mathematical model.

5. Claims 3, 4, 11, 12, 19, 20, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews et al in view of Rayl et al (US 6,769,403 B2).

Regarding claims 3, 4, 11, 12, 19, 20, and 28, with reference to above rejections Matthews et al disclose all that is claimed except the output shaft speed signal is indicative of a rotational speed of an output shaft of a transmission.

Rayl et al disclose an engine control system which is included an output of the engine 16 is coupled by a torque converter clutch 58 and a transmission 60 to front and/or rear wheels (col. 3, lines 7-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system with a transmission shaft speed as taught by Rayl et al, so as to provide improved method for the engine control system of Matthews et al.

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Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny H. Hoang whose telephone number is (571) 272-4843. The examiner can normally be reached on Monday - Thursday (7:00Am-5: 30Pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on (571) 272-4856.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JHH
May 27, 2005

Johnny H. Hoang
Examiner
Art Unit 3747

Tony M. Argenbright
Tony M. Argenbright
Primary Examiner
Art Unit 3747